Ummi Hafilda bte Ali & Anor v Karangkraf Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO S2 (S5)-23-38 OF 1999
KAMALANATHAN RATNAM J
30 MARCH 2000

***Tort** — Defamation — Libel — Article does not carry full name of second plaintiff — Extrinsic facts to article conclude that article refers to second plaintiff — Whether statement of claim should be struck out*

The plaintiffs sued the defendants for defamation. The plaintiff alleged that the defendants had caused to be published, printed and distributed an article that the first plaintiff was married to one Khairuddin, the nephew of Suleiman Palestin, a former UMNO leader. The second plaintiff contended that he is the person named therein.The defendants applied to strike out the second plaintiff's statement of claim and that the suit against them be dismissed pursuant to O 18 r 19(1)(a) of the Rules of the High Court 1980 ('the RHC'). The learned senior assistant registrar refused the application and hence this appeal. The plaintiffs alleged that by the article, the defendants meant and were understood to mean that both the plaintiffs had eloped to get married and that their reputation as a businesswoman and a businessman has been brought into disrepute, odium and contempt. The defendants argued that the mere mention of the word 'Khairuddin' could not amount to a pointed reference to the second plaintiff (Khairuddin Abu Hassan).

Held, dismissing the appeal:

Notwithstanding the fact that the article did not carry the full name of the second plaintiff, there were sufficient matters in the pleadings referring to matters of fact extrinsic to the article that lead the court to conclude that the article did in fact refer to the second plaintiff or was capable in law of referring to him (see p 689A–B). There was clear reference to the Khairuddin who was supposed to have married the first plaintiff, as being the nephew of Sulaiman Palestin, the former UMNO leader. The second plaintiff had admitted in the statement of claim that he was indeed the nephew of Sulaiman Palestin, the former UMNO leader. There was also a further reference in the article to this marriage having taken place at Khairuddin's home in a village called Kampung Kebun Sireh near Bukit Mertajam; and Khairuddin has admitted that he hailed from this village (see p 688G–H).

[Bahasa Malaysia summary

Plaintif-plaintif telah mendakwa defendan-defendan kerana fitnah. Plaintif mendakwa bahawa defendan-defendan telah menyebabkan

supaya diterbitkan, dicetak dan diedarkan satu rencana bahawa defendan pertama telah berkahwin dengan seorang bernama Khairuddin, anak saudara Suleiman Palestin, seorang bekas ketua UMNO. Plaintif kedua menegaskan bahawa beliau adalah orang yang dinamakan di dalamnya. Defendan-derfendan telah memohon untuk membatalkan pernyataan tuntutan plaintif kedua dan supaya guaman terhadap mereka ditolak selaras dengan A 18 k 19(1)(a) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Penolong Kanan Pendaftar yang arif telah menolak permohonan tersebut dan dengan itu menyebabkan rayuan ini. Plaintif-plaintif tersebut mendakwa bahawa dengan rencana itu, defendan bermaksud dan telah difahami sebagai bermaksud bahawa kedua-dua plaintif-plaintif tersebut telah lari untuk berkahwin dan bahawa reputasi mereka sebagai ahli peniaga telah dikeji, dibenci dan dihina. Defendan-defendan berhujah bahawa sebutan perkataan 'Khairuddin' sahaja tidak boleh membawa kepada suatu rujukan yang ditujukan kepada plaintif kedua (Khairuddin Abu Hassan).

Diputuskan, menolak rayuan tersebut:

Meskipun terdapatnya fakta bahawa rencana tersebut tidak menyebut nama penuh plaintif kedua, terdapat perkara-perkara yang mencukupi di dalam pliding-pliding tersebut yang merujuk kepada perkara-perkara fakta yang luar daripada rencana tersebut yang menyebabkan mahkamah memutuskan bahawa rencana tersebut tidak pada hakikatnya merujuk kepada plaintif kedua atau berkebolehan di sisi undang-undang untuk merujuk kepada beliau (lihat ms 689A–B). Terdapat rujukan yang jelas kepada Khairuddin yang diandaikan telah berkahwin dengan plaintif pertama, sebagai merupakan anak saudara Sulaiman Palestin, bekas ketua UMNO. Plaintif kedua telah mengakui dalam pernyataan tuntutan bahawa beliau adalah sesungguhnya anak saudara Sulaiman Palestin, bekas ketua UMNO tersebut. Terdapat juga rujukan selanjutnya dalam rencana tersebut kepada perkahwinan ini yang telah berlangsung di kediaman Khairuddin di sebuah kampung yang dikenali sebagai Kampung Kebun Sireh berdekatan Bukit Mertajam; dan Khairuddin telah mengakui bahawa beliau berasal daripada kampung ini (lihat ms 688G–H).]

Notes

For cases on libel generally, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 165–230.

Cases referred to

Bruce v Odhams Press Ltd [1936] 1 KB 697 (refd)

Legislation referred to

Rules of the High Court 1980 O 18 r 19(1)(a)

John Clark Sumugod (*Sidek Teoh Wong & Dennis*) for the plaintiffs.
Haris Ibrahim (*Nurul Akmar bte Omar* (*Haris & Co*) for the defendants.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

The plaintiffs, claiming to be a businesswoman and a businessman, sued the defendants for defamation. Both the plaintiffs were prosecution witnesses in a criminal proceeding against Dato' Seri Anwar bin Ibrahim, the former Deputy Prime Minister of Malaysia. It is the plaintiffs' case that the defendants respectively caused to be published, printed and distributed in their magazine called 'Bacaria' an article that the first plaintiff was married to one Khairuddin, the nephew of Suleiman Palestin, a former UMNO leader. The second plaintiff contends that he is the person named therein.

Case for the plaintiffs

Both plaintiffs deny that they are married and thus contend that their credibility has been affected.

The application by the defendants

The defendants applied to strike out the second plaintiff's statement of claim and thereafter that the suit be dismissed against them pursuant to O 18 r 19(1)(a) of the Rules of the High Court 1980 ('the RHC'). The learned senior assistant registrar ('SAR') refused the said application. Hence this appeal before me by the defendants.

The appeal

Since the application as conceded by Encik Haris Ibrahim was only made pursuant to O 18 r 19(1)(a) of the RHC no affidavit evidence is available. The application was premised on the basis that no reasonable cause of action has been disclosed.

Findings of the court

For the purposes of this appeal, I need not consider the facts of the case in full detail except to state that pursuant to para 4 of the statement of claim it is the plaintiffs' case that by the said article the defendants meant and were understood to mean that both the plaintiffs had eloped to get married and that their reputation as a businesswoman and a businessman has been brought into disrepute, odium and contempt.

The defendants on the other hand argued that the word 'Khairuddin' although appearing about ten times in print in the article, could not be said

to be referring to the second plaintiff because the second plaintiff's name as pleaded is Khairuddin Abu Hassan and that the mere mention of the word 'Khairuddin' could not amount to a pointed reference to the second plaintiff.

I am satisfied that notwithstanding the fact that the article does not carry the full name of the second plaintiff there are sufficient matters attended to in the pleadings referring to matters of fact extrinsic to the article that leads this court to conclude that the article does in fact refer to the second plaintiff or is capable in law of referring to him. The defendant relied on a Court of Appeal decision in *Bruce v Odhams Press Ltd* [1936] 1 KB 697. In that case the defendants published an article in a newspaper published by them in which they referred to certain aeroplane smuggling exploits of 'an English woman'. The plaintiff brought an action in libel against the defendants, and in her statement of claim she alleged that the words 'an English woman', 'she', and 'her' in the article referring to the woman who was alleged to have been guilty of plane smuggling, meant the plaintiff; but the plaintiff was not identified in the article by name or description as the woman referred to. The defendants applied for an order for particulars of the allegation that the words complained of referred to the plaintiff. The master gave the order prayed for; but the judge in chambers reversed the order on appeal. The Court of Appeal in reversing the judgment of the Judge in chambers held that the plaintiff could only succeed in establishing her case in libel by showing that there were some facts or circumstances which justified reasonable people who read the article to construe the words complained of, as referring to her. Greer LP said at p 705 as follows:

> ... Defamatory statements which are in the air, as it were, and do not appear by their words to refer to the plaintiff, have got to be made referable to the plaintiff by reason of special facts and circumstances which show that the words can be reasonably construed as relating to the plaintiff. It is not sufficient under the existing rules of practice merely to allege in general terms a cause of action. Such cause of action must be alleged with particularity.

I do not think that the facts and the ratio of this case support the defendants in the case before me. The defendants applied to strike out the claim for want of particulars. But the relevant particulars are indeed there. There was clear reference to the Khairuddin who was supposed to have married the first plaintiff, as being the nephew of Sulaiman Palestin, the former UMNO leader. The second plaintiff has admitted in the statement of claim that he is indeed the nephew of Sulaiman Palestin, the former UMNO leader. There was also a further reference in the article to this marriage having taken place at Khairuddin's home in a village called Kampung Kebun Sireh near Bukit Mertajam; and Khairuddin has admitted that he hails from this village. To my mind these are clear facts that the second plaintiff has relied on to formulate his claim on libel. Just because the article does not carry the full name of the second plaintiff does not detract from the fact that the Khairuddin referred to in the article is the Khairuddin who is the nephew of Sulaiman Palestin, and that the said Khairuddin is also the second plaintiff. I am satisfied that the words complained of refer to the second

plaintiff and that there is a sufficient link between the Khairuddin referred to in the publication and the second plaintiff. Unlike the case of *Bruce v Odhams Press Ltd* where the plaintiff was not at all identified as the person defamed and that therefore the plaintiff would have had to prove an innuendo identifying her, in the minds of reasonable persons reading the libel, as the person defamed, the case before me has stronger props which I have identified in my judgment. Further it is a fact that both the plaintiffs were key witnesses in the corruption case against Anwar Ibrahim.

In the circumstances, taking the statement of claim as a whole, I am satisfied that the second plaintiff has been sufficiently identified as the person referred to in the matter complained of. I have to be satisfied that on the first question of law, the article, having regard to its language, can be regarded as capable of referring to the second plaintiff. On the second question, relating to a question of fact, I am satisfied that the article in fact would lead reasonable people, who know the second plaintiff, to the conclusion that the said article does indeed refer to him. I therefore dismiss this appeal with costs.

Appeal dismissed.

Reported by Benjamin Yong